

REMARKS

Appreciation is expressed to Examiner Portner and SPE Robert Mondesi for the courteous and helpful interview of July 26, 2009. It is believed that the following provides the information necessary to result in an allowance of this application in accordance with that discussion. The following also addresses issues raised in the Office Action of June 29, 2009, in 10/321,558.

As the undersigned understands the situation, the examiner is in agreement with the appropriateness of using Applicants' "Lundak" declaration in conjunction with the recent ATCC deposit in order to overcome the sequence-associated problems by using references to the deposit as a basis to claim the subject matter of this application. The problem is that the examiner has noted various alleged inconsistencies between the sequence contained in the deposited antibody and other applicant-related disclosures pertaining to this sequence. As show below, although Applicants have made various initial inadvertent errors in reporting the sequence of L19 to the public, these have been corrected.

The Correct Linker Sequence in L19

The examiner has noted inconsistencies related to the linker portion of L19. As originally disclosed in the current application, this linker portion was stated to be 14 amino acids long. However, in fact, the L19 antibody, as originally prepared and currently, has only a 12 amino acid linker and in reality lacks the last two amino acids reported for the linker in the original disclosure of this application (TG). Applicants have chosen to claim the correct sequence of L19 by making a Lundak deposit and referring to the latter in the claims.

The inconsistencies which the examiner would like to see corrected on the record are based on two items, Pini et al. (1998) and current Swiss-Prot database information.

For aid in understanding the situation, a brief chronology is presented.

1. L19 is prepared as reported in the examples of this application and in reality has a linker which is 12 amino acids long.
2. The current application as originally filed on May 11, 1998, inadvertently and

incorrectly reported the linker as having 14 amino acids instead of the correct 12 amino acids.

3. Pini (1998) refers to an EBI database deposit containing the sequence of L19. Indeed, this EBI deposit contained the same error in identifying the linker as having 14 amino acids.

4. The error in the EBI database has been corrected under Accession No. AJ006113. (See also Exhibit 2 containing the correct L19 sequence for completeness.)

5. As can be seen from the attached e-mail string between Ms. Madelaine Moinat (Swiss-Prot annotated) and Dr. Giovanni Neri (associated with the assignee), the entry noted by the Examiner in Swiss-Prot was not made by applicants. (Exhibit 3) Rather, it was imported from EMBL/EBI by Swiss-Prot on its own. The latter imported only the originally deposited incorrect information, thereby repeating the linker sequence error, despite the fact that at the time of importation (February 2007), the EMBL database contained the correct information.

As can be seen, the Swiss-Prot database does not reflect any continuing error on the part of Applicants. Rather, it simply reflects perpetuation of an old error, due to the internal processing of Swiss-Prot itself. Thus, the inconsistency noted by the examiner in no way undermines the credibility/accuracy of the Neri declaration submitted in this application.

The latter conclusion also applies to the information in US 2004/0001790 to which the examiner points in 10/321,558. As the examiner notes, this publication does reproduce the linker sequence error in its paragraph 31 and SEQ ID NO: 1. However, Figure 1 of this publication is not similarly inconsistent with the correct sequence. Rather, it in fact does show the correct linker length as "12aa". See the very first entry in the figure, which entry is denoted as "L19." The examiner has alleged that this figure contains only derivatives of L19, thus, it is believed, alleging that the correct sequence (12aa) is stated to be a derivative of L19. This is believed to rely on an inadvertent oversight since the figure does indeed unambiguously denote the linker in L19 as having 12aa. Consequently, this document, overall, does contain the correct sequence information (albeit also containing the wrong sequence length of 14aa in a different part of the document). Applicants are now in the process of correcting this error in the application corresponding to the cited publication.

As can be seen, all of the information of record showing that the correct linker sequence of L19 has 12 amino acids is consistent. Unfortunately, errors have been made in various submissions made by Applicants in the past and one due to a mistake made by Swiss-Prot. All of the errors have been corrected or are in the process of being corrected. Thus, Applicants' consistent current position is that the L19 linker length is 12aa, which is a necessary position because that indeed is and has always been the correct linker length. This is now unambiguously established.

Accordingly, the Neri Lundak declaration is fully sufficient to support the current claims of this application.

Figure 6

A substitute version of Figure 6 is being filed which deletes the incorrect linker and VL sequence information as requested by the PTO. Consequently, Figure 6 is no longer inconsistent with the deposit information and the original L19 antibody sequence as produced by the procedures of Example 2. This action is not to imply that such amendment was necessary, in view of the explanation to the public now contained in this application as to the correct sequences involved.

The expression "32 and 50" has been restored as the examiner requests since inconsistent information has been deleted and this phrase is not relevant to the claims, which rely on the deposit for support.

As for the Examiner's comment on claim 28, see original claim 28 for the encompassed concept and page 13, lines 21-23 for further support. Support for the change to claim 24 can be seen at page 9, line 11.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

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